

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 JESSICA ANDERSON,
11 Plaintiff
12
13 v.
14 NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
15 Defendant.

Case No. 2:17-cv-03127-GJS

**MEMORANDUM OPINION AND
ORDER**

16
17 **I. PROCEDURAL HISTORY**

18 On April 26, 2017, Plaintiff Jessica Anderson (“Plaintiff”) filed a Complaint
19 seeking review of a decision by Defendant, the Acting Commissioner of Social
20 Security (“Commissioner”), denying her application for Supplemental Security
21 Income (“SSI”). On August 7, 2017, the Commissioner filed an Answer to the
22 Complaint and lodged the Administrative Record (“AR”). On September 8, 2017,
23 the Commissioner lodged a supplement to the AR. The parties filed consents to
24 proceed before the undersigned United States Magistrate Judge [Dkts. 11 & 23] and
25 briefs addressing disputed issues in the case [Dkt. 18 (“Pl. Br.”), Dkt. 21 (“Def.
26 Br.”), & Dkt. 22 (“Pl. Rep.”)]. The Court has taken the parties’ briefing under
27 submission without oral argument. For the reasons that follow, the Court finds that
28 this matter should be remanded for additional proceedings.

II. ADMINISTRATIVE DECISION UNDER REVIEW

On September 10, 2012, Plaintiff filed an application for SSI, alleging disability since May 1, 2003, due to depression, anxiety, personality disorder, learning disorder, history of seizures, low back pain with radiculopathy, and obesity. [AR 22, 104-11, 130, 174.] Plaintiff's application was denied initially and on reconsideration. [AR 74-77, 83-87.] Hearings were held before Administrative Law Judge Mary L. Everstine ("the ALJ") on October 28, 2014 and May 19, 2015. [AR 42-48, 670-86.]

On June 2, 2015, the ALJ issued a decision applying the sequential evaluation process to find Plaintiff not disabled. [AR 22-34]; *see* 20 C.F.R. § 416.920(b)-(g)(1). At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity since the date of her application, September 10, 2012. [AR 24.] At step two, the ALJ determined that Plaintiff has the following severe impairments: morbid obesity, seizure disorder well controlled on medication, lumbar degenerative disc disease without stenosis, borderline intellectual functioning, and a history of methamphetamine dependence in remission. [*Id.*] At step three, the ALJ determined that Plaintiff's conditions did not meet or equal any of the impairments listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. [AR 27.] Next, the ALJ found that Plaintiff had the residual functional capacity ("RFC") to perform medium work (20 C.F.R. § 416.967(c)), with the following limitations:

[Plaintiff] is limited to occasional climbing of ropes, ladders, and scaffolds and occasional balancing.
[Plaintiff] is restricted to frequent climbing of stairs or ramps and frequent stooping, kneeling, crouching, and crawling. [Plaintiff] cannot work around unprotected heights. [Plaintiff] cannot operate hazardous or moving machinery. [Plaintiff] is limited to simple, routine tasks.

[AR 28.] At step four, the ALJ determined that Plaintiff does not have any past relevant work. [AR 32.] At step five, the ALJ determined that Plaintiff could perform jobs existing in significant numbers in the national economy. [AR 33.]

1 The Appeals Council denied review of the ALJ's decision on October 14,
2 2016. [AR 7-9.] This action followed.

3 Plaintiff now raises the following issues challenging the ALJ's findings and
4 determination of non-disability:

- 5 1. The ALJ improperly assessed and rejected the opinion of the examining
6 psychologist.
- 7 2. The ALJ's RFC and step five finding contain legal errors and are not
8 supported by substantial evidence.
- 9 3. The ALJ improperly assessed and rejected the third party written
10 testimony.
- 11 4. The ALJ improperly discredited the testimony of Plaintiff.

12 [Pl. Br. at 2-25; Pl. Rep. at 1-10.] Plaintiff requests reversal and remand for
13 payment of benefits or, in the alternative, remand for further administrative
14 proceedings. [Pl. Br. at 25; Pl. Rep. at 10.]

15 The Commissioner asserts that the ALJ's decision should be affirmed, or in
16 the alternative, remanded for further development of the record if the Court finds
17 error in the ALJ's consideration of the record. [Def. Br. at 9.]

18 **III. GOVERNING STANDARD**

19 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner's decision to
20 determine if: (1) the Commissioner's findings are supported by substantial
21 evidence; and (2) the Commissioner used correct legal standards. *Carmickle v.*
22 *Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*,
23 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is "such relevant
24 evidence as a reasonable mind might accept as adequate to support a conclusion."
25 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (internal citation and quotations
26 omitted); *see also Hoopai*, 499 F.3d at 1074.

27 ///

28 ///

IV. DISCUSSION

Plaintiff contends the ALJ erred by improperly rejecting the opinion of an examining psychologist, Dr. Ahmed El Sokkary. [Pl.'s Br. at 2-10; Pl. Rep. at 1-4.]

In general, a treating physician's opinion is entitled to more weight than an examining physician's opinion, and an examining physician's opinion is entitled to more weight than a nonexamining physician's opinion. *See Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). An ALJ must provide clear and convincing reasons supported by substantial evidence to reject the uncontradicted opinion of a treating or examining physician. *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005) (citing *Lester*, 81 F.3d at 830-31). If a treating or examining doctor's opinion is contradicted by another medical opinion, an ALJ may reject it only by providing specific and legitimate reasons supported by substantial evidence. *Bayliss*, 427 F.3d at 1216. "This is so because, even when contradicted, a treating or examining physician's opinion is still owed deference and will often be 'entitled to the greatest weight . . . even if it does not meet the test for controlling weight.'" *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014) (quoting *Orn v. Astrue*, 495 F.3d 625, 633 (9th Cir. 2007)). An ALJ can satisfy the "substantial evidence" requirement by "setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating [her] interpretation thereof, and making findings." *Garrison*, 759 F.3d at 1012 (internal quotation marks and citation omitted).

In December 2014, consultative examiner Dr. El Sokkary conducted a psychological evaluation of Plaintiff and completed a medical source statement. [AR 448-51, 453-55.] Plaintiff reported that she started having sexual intercourse at age eight, was raped when she was 13 years old, was in special education classes until she left school in the 11th grade, received a diploma through the computer with the help of her mother, had six children all of whom were adopted out, received SSI before she was incarcerated, and had been hospitalized in 2014 and while in prison for suicidal ideation and "cutting." [AR 448-49.] Plaintiff complained she suffered

1 from anxiety, depression, auditory hallucinations, paranoia, seizures, insomnia, and
2 chronic low back pain. [AR 448-49.] Dr. El Sökkary reported that Plaintiff was
3 able to care for hygiene and grooming, and was able to participate in daily living
4 activities, such as light cooking, cleaning, and water aerobics, but spent most of her
5 time with her mother watching television. [AR 448.] Plaintiff's mental status
6 examination revealed Plaintiff was polite, cooperative, and alert, had good eye
7 contact, and was fully oriented, but she had poor sleep, underproductive thought
8 process, a history of suicidal ideation with hospitalizations, numerous arrests, past
9 substance abuse, and was receiving therapy and medication for depression and
10 anxiety. [AR 449.]

11 Dr. El Sökkary also administered standardized intelligence tests. [AR 450.]
12 Plaintiff received a full scale IQ score of 71, which was in the borderline range.
13 [Id.] Plaintiff's scores in verbal comprehension, working memory and auditory
14 memory score were in the extremely low range. [Id.] Plaintiff's scores in
15 perceptual reasoning, processing speed, and visual memory were in the low average
16 range. [Id.]

17 Based on the examination, Dr. El Sökkary found that Plaintiff's overall
18 clinical presentation was "an individual with borderline cognitive abilities, with
19 symptoms of bipolar and psychosis." [AR 451.] He assigned Plaintiff a Global
20 Assessment of Functioning score of 53. [Id.]

21 As for Plaintiff's ability to perform work-related activities, Dr. El Sökkary
22 opined that Plaintiff would have "moderate" restrictions in the ability to understand,
23 remember, and carry out simple instructions, make judgments on simple work-
24 related decisions, and respond appropriately to usual work situations and to changes
25 in a routine work setting and "extreme" limitations understanding, remembering,
26 and carrying out complex instructions. [AR 451, 453-54.] Dr. El Sökkary also
27 found that Plaintiff "struggled to maintain a sufficient level of concentration,
28 persistence, and pace," indicating "she would have difficulty in a competitive work

1 setting” and “may have some difficulty keeping a regular workday/workweek
2 schedule without brief interruptions from psychiatric symptoms.” [AR 451.] Dr. El
3 Sokkary concluded that if Plaintiff’s disability application were to be approved, she
4 would not be able to manage supplemental funds. [AR 451, 455.]

5 The ALJ rejected Dr. El Sokkary’s assessment of Plaintiff’s “extreme
6 limitations” because (1) Dr. El Sokkary’s opinion was “not supported by objective
7 mental health evidence,” (2) Plaintiff was able to perform a number of daily
8 activities and had earned a GED on the computer, (3) Plaintiff’s mental status
9 examination was inconsistent with Dr. El Sokkary’s opinion, (4) Plaintiff’s
10 intelligence test scores in the extremely low range were not supported by any other
11 physician and were inconsistent with Plaintiff’s ability to complete high school, and
12 (5) the state agency medical consultants concluded that Plaintiff had no severe
13 mental disorder. [AR 31.] Substantial evidence does not support the ALJ’s
14 decision.

15 The ALJ’s rejection of Dr. El Sokkary’s opinion as unsupported by objective
16 mental health evidence is contradicted by the record. [AR 31.] Plaintiff’s test
17 results showed an individual with a full scale IQ in the borderline range with a score
18 of 71, scores in the extremely low range in auditory memory, immediate memory,
19 verbal comprehension, and working memory,¹ and scores in the low average range
20 in perceptual reasoning, processing speed, and visual memory. [AR 450.] Dr. El
21 Sokkary reported Plaintiff’s complaints of poor sleep, problems with depression and
22 anxiety, prior history of suicidal ideation with hospitalizations, and under productive
23 thought process. [AR 449.] Plaintiff’s medical records also confirm Plaintiff’s long
24 history of depression and anxiety and document Plaintiff’s complaints of memory
25 problems, auditory hallucinations, and paranoia. [AR 241, 249-55, 276, 280, 282-
26

27 ¹ As discussed in more detail below, the ALJ rejected Plaintiff’s verbal
28 comprehension and working memory scores, but failed to state adequate reasons for
doing so. [AR 31, 450.]

1 85, 288, 305, 317, 325, 333, 342-43, 347, 402, 418, 463, 472, 477, 482, 497, 526,
2 533, 539, 546, 557, 567, 630.] Thus, the record lacks substantial evidence to
3 support the ALJ's conclusion that Dr. El Sokkary's opinion, itself, was unsupported
4 by the objective mental health evidence. To the contrary, it was, in fact, supported
5 by objective mental health evidence.

6 Plaintiff's activities of daily living and online high school diploma do not
7 justify the ALJ's decision to reject Dr. El Sokkary's assessment of Plaintiff's ability
8 to function in the workplace. [AR 31, 451, 453-54.] Although Plaintiff
9 acknowledged she was able to maintain personal hygiene, perform some basic
10 household chores, and attend water aerobics classes, the record also reveals that
11 Plaintiff suffers from depression, anxiety, and auditory hallucinations, and spends
12 almost all of her time with her mother watching television. [AR 448-49, 451, 539,
13 567, 674, 678-82.] And, while Plaintiff was able to earn a high school diploma
14 online after her release from prison at age 32, Plaintiff explained that she has
15 difficulty reading, problems with memory, cannot manage her own money or make
16 change, and relied on her mother to read her assignments and help with the answers.
17 [AR 448, 674, 680, 683.] Thus, Plaintiff's limited daily activities and receipt of an
18 online diploma are not in conflict with Dr. El Sokkary's opinion. *See Ghanim v.*
19 *Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014) ("A claimant need not be completely
20 incapacitated to receive benefits.") (citing *Smolen v. Chater*, 80 F.3d at 1273, 1284
21 n.7 (9th Cir. 1996)).

22 The ALJ also discounted Dr. El Sokkary's opinion because Plaintiff's mental
23 status examination revealed some normal findings, except for an underproductive
24 thought process. [AR 31, 449.] Although the ALJ correctly notes that Dr. El
25 Sokkary reported that Plaintiff was "polite and cooperative," "oriented in all
26 spheres," "made good eye contact," had normal speech, and "reportedly had not
27 abused drugs in a year," the ALJ does not explain how these particular aspects of the
28 mental status examination are inconsistent with the limitations assessed by Dr. El

1 Sokkary, such as moderate restrictions in the ability to understand, remember, and
2 perform simple tasks and difficulties completing a normal workday/workweek
3 without brief interruptions from psychiatric symptoms. [AR 449, 451.] When an
4 ALJ seeks to discredit a medical opinion, she must explain why her own
5 interpretations, rather than those of the doctors, are correct. *See Reddick v. Chater*,
6 157 F.3d 715, 725 (9th Cir. 1998) (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22
7 (9th Cir. 1988)). Moreover, the ALJ did not address several of Dr. El Sokkary's
8 other findings in the mental status examination. [AR 31, 449.] As discussed, Dr. El
9 Sokkary reported Plaintiff's complaints of poor sleep, depression, and anxiety, and
10 prior history of suicidal ideation with hospitalizations. [AR 449.] Dr. El Sokkary
11 also noted that Plaintiff was receiving weekly therapy and medication for depression
12 and anxiety. [AR 448-49.] The ALJ's selective reliance on only some of Dr. El
13 Sokkary's findings in the mental status examination does not provide a sufficient
14 basis for rejecting his opinion. *See Holohan v. Massanari*, 246 F.3d 1195, 1205 (9th
15 Cir. 2001) (a treating doctor's "statements must be read in context of the overall
16 diagnostic picture he draws").

17 The ALJ "rejected" Plaintiff's extremely low verbal comprehension and
18 working memory scores, because "no other physician reported such extreme mental
19 impairment." [AR 31.] However, the ALJ failed to explain how the absence of any
20 corroborating test scores undermined the validity of Plaintiff's scores. *See, e.g.*,
21 *Stokes v. Astrue*, No. CV 09-1264-PK, 2011 WL 285224, at *8 (D. Or. Jan. 4, 2011)
22 ("the ALJ improperly rejected Stokes' IQ scores because he never explicitly
23 commented on their validity"); *Alcaraz v. Berryhill*, No. CV 16-4784 JC, at *4
24 (C.D. Cal. Mar. 28, 2017) ("An ALJ may reject an IQ score as invalid where
25 substantial evidence supports doing so"). The ALJ also incorrectly found that
26 Plaintiff "acknowledged she was able to complete high school." [AR 31.] As
27 discussed, Plaintiff received a diploma online, but her mother had read the
28 assignments to her and helped with the answers. [AR 448, 674.] Thus, the ALJ's

1 rejection of Plaintiff's verbal comprehension and working memory scores is not
2 supported by substantial evidence and is not a specific and legitimate basis for
3 rejecting Dr. El Sokkary's opinion.

4 Finally, the ALJ relied on the opinions of the non-examining state agency
5 medical consultants who concluded that Plaintiff's mental impairment was not
6 severe. [AR 31, 54-55, 66-67.] The ALJ found that these doctors' opinions were
7 "more consistent with the lack of mental health findings and treatment in the
8 record." [*Id.*] However, the opinions of non-examining state agency medical
9 consultants, standing alone, do not constitute substantial evidence to overcome the
10 opinion of an examining physician. *See Lester*, 81 F.3d at 832 ("In the absence of
11 record evidence to support it, the nonexamining medical advisor's testimony does
12 not by itself constitute substantial evidence that warrants a rejection of . . . the
13 examining psychologist's opinion."); *Erickson v. Shalala*, 9 F.3d 813, 818 n. 7 (9th
14 Cir. 1993) (same). Moreover, the state agency medical consultants conducted their
15 review of Plaintiff's records in 2012 and 2013, and did not have the opportunity to
16 review Dr. El Sokkary's consultative evaluation or any of Plaintiff's treatment
17 records from 2013, 2014, or 2015. [AR 50-52, 54-55, 66-67, 401-669.] Thus, the
18 opinions of the state agency medical consultants did not constitute a specific,
19 legitimate basis for rejecting Dr. El Sokkary's opinion.

20 In sum, the ALJ improperly discounted Dr. El Sokkary's opinion as to the
21 severity of Plaintiff's mental condition and her ability to work. Accordingly,
22 remand is warranted.

23 V. CONCLUSION

24 When the Court reverses an ALJ's decision for error, the Court "ordinarily
25 must remand to the agency for further proceedings." *Leon v. Berryhill*, 880 F.3d
26 1041, 1045 (9th Cir. 2017); *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004)
27 ("the proper course, except in rare circumstances, is to remand to the agency for
28 additional investigation or explanation"); *Treichler v. Comm'r of Soc. Sec. Admin.*,

1 775 F.3d 1090, 1099 (9th Cir. 2014). But the Court does have discretion to make a
2 direct award of benefits under the “credit-as-true” rule, which asks whether: “(1)
3 the record has been fully developed and further administrative proceedings would
4 serve no useful purpose; (2) the ALJ has failed to provide legally sufficient reasons
5 for rejecting evidence, whether claimant testimony or medical opinion; and (3) if the
6 improperly discredited evidence were credited as true, the ALJ would be required to
7 find the claimant disabled on remand.” *Garrison*, 759 F.3d at 1020. Each part of
8 this three-part standard must be satisfied for the Court to remand for an award of
9 benefits, *id.*, and it is only the “unusual case” that meets this standard, *Benecke*, 379
10 F.3d at 595. Moreover, if “an evaluation of the record as a whole creates serious
11 doubt that a claimant is, in fact, disabled,” a court must remand for further
12 proceedings “even though all conditions of the credit-as-true rule are satisfied.”
13 *Garrison*, 759 F.3d at 1021; *see also Leon*, 880 F.3d at 1045 (“an award under [the
14 credit-as-true] rule is a rare exception, and the rule was intended to deter ALJs from
15 providing boilerplate rejections without analysis”); *Brown-Hunter v. Colvin*, 806
16 F.3d 487, 495 (9th Cir. 2015) (“The touchstone for an award of benefits is the
17 existence of a disability, not the agency’s legal error.”).

18 Here, the ALJ’s decision to reject Dr. El Sokkary’s opinion did not reflect a
19 full and accurate consideration of all the evidence. Because questions regarding the
20 extent to which Plaintiff’s symptoms limit her ability to work remain unresolved,
21 the record has not been fully developed and remand for further proceedings is
22 appropriate. *See Garrison*, 759 F.3d at 1020; *Dominguez v. Colvin*, 808 F.3d 403,
23 407 (9th Cir. 2016) (remand for further proceedings is appropriate when the record
24 is not “fully developed”). On remand, the ALJ should conduct a review of the entire
25 record in a manner consistent with the Court’s findings and re-weigh the medical
26 evidence. Depending on the outcome of that review, the ALJ must provide legally
27 justifiable reasons for rejecting any of the opinions provided by Plaintiff’s
28

1 physicians.²

2 For all of the foregoing reasons, **IT IS ORDERED** that:

- 3 (1) the decision of the Commissioner is REVERSED and this matter is
4 REMANDED pursuant to sentence four of 42 U.S.C. § 405(g) for further
5 administrative proceedings consistent with this Memorandum Opinion and
6 Order; and
7 (2) Judgment be entered in favor of Plaintiff.

8 **IT IS ORDERED.**

9
10 DATED: April 30, 2018



11
12 _____
13 GAIL J. STANDISH
14 UNITED STATES MAGISTRATE JUDGE
15
16
17
18
19
20
21
22

23 _____
24 ² The Court has not reached the remaining issues raised by Plaintiff (i.e., whether
25 the ALJ erred in assessing Plaintiff's RFC and determining Plaintiff was capable of
26 performing other work, whether the ALJ properly considered a third party
27 statement, and whether the ALJ properly discounted Plaintiff's subjective symptom
28 testimony), except as to determine that reversal with the directive for immediate
payment of benefits would not be appropriate at this time. However, the ALJ should
address Plaintiff's additional contentions of error when evaluating the evidence on
remand.